

Internal Revenue Service

Department of the Treasury

Contact Person:

Telephone:

In Reference to:

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

You were incorporated under the laws of [REDACTED]. Your purpose as stated in your Bylaws is "saving specific sandy beach areas with breakthrough technology, which also strengthens or improves environmental and recreational resources."

You state in your application that you were formed to construct and emplace an artificial reef on the sea floor in the [REDACTED] for the following purposes:

- (1) remediation of seabed and shoreline erosion caused by the presence and subsequent removal of [REDACTED] well piers from the [REDACTED];
- (2) prevention of future erosion of the seabed and shoreline in the [REDACTED];
- (3) testing, evaluation, and study of the effects and utility of artificial reefs in the control and prevention of seabed and shoreline erosion, the creation of artificial waves, and other potential applications of such structures;
- (4) testing, evaluation, and study of the means and methods of emplacing artificial reefs on the sea floor;
- (5) creation of an artificial habitat for sea life;

(6) establishing a readily accessible offshore location in which scientific study of sea life may be conducted;

(7) manipulation of ocean surges into artificial waves supporting research and study of ocean wave patterns, oceanography, and wave motion; and

(8) incidental recreational use of artificial waves by the general public.

You state that your planned programs and activities will center around the artificial reef that you will affix to the seabed in the [REDACTED]. Programs and activities will largely involve making the artificial reef, and the environment created by the reef, available for study and experimentation by scientific and educational groups and institutions. The reef will also provide opportunities to the public for recreational surfing. Using the artificial reef, you will sponsor or conduct: educational diving trips; studies of surf; experiments in nurturing of kelp beds; studies of the ocean; experiments in prevention of sand/beach erosion; and, other programs in furtherance of and consistent with your purposes.

You state that you will receive your principal asset in the form of a technology license to use an artificial reef developed by [REDACTED]. The license will be granted to you at no cost. You expect to receive a contribution of services from [REDACTED] which is to consist of installation of the artificial reef off-shore. Operating services will be provided to you at no cost by [REDACTED].

You state that because your main function is to hold the artificial reef license and make the artificial reef available to others for the aforementioned purposes, significant fundraising is not contemplated at this time.

In response to a request for supplemental, clarifying information, you provided the following:

(1) There is no presently existing technology license between [REDACTED] and [REDACTED]. If and when the various components of the project come together, such a license would be granted. The license would be non-exclusive from [REDACTED] to you. [REDACTED] would continue to use the technology for commercial purposes in other areas. However, the use to the [REDACTED] would be

non-commercial.

(2) [REDACTED] designs manufactures and sells a series of coffee mugs and related items. [REDACTED] holds the technology for a newly designed snowboard binding, as well as some related [REDACTED] concepts. The proposal [REDACTED] activities of the [REDACTED] would be completely separate from the day to day activities of either organization.

(3) At the present time, there are no agreements between [REDACTED] and the [REDACTED] research [REDACTED] is not operative in this location.

(4) The [REDACTED] is a public beach and would be maintained as a public beach. It is and will be open and accessible to the general public. The artificial reef would be sunk in the ocean and would be equally open and accessible to the general public. The reef, once in place, would not need to be "operated". The real purpose of [REDACTED] would be to integrate the sinking and maintaining of the reef for public benefit, along with maintenance of a park in that location.

(5) The actual research, testing and evaluation of the effects on the ecology would be open to whomever wants to participate. Since the reef would then become "public domain", the study of its effects along with the attendant studies, including the impact on local fishery, would be available to whoever wants to use them.

(6) There are no agreements or sharing arrangements between [REDACTED] and [REDACTED] since it is in its formative stages.

(7) There will be no royalties or fees paid to either [REDACTED], as the result of any licensing agreement. The technology will be donated at cost of actual production of the reef.

(8) There are currently no ads, flyers or brochures which are currently designed to be used for this project.

Section 501(c)(3) of the Code provides for the exemption from

[REDACTED]

Federal income tax of organizations that are organized and operated exclusively for charitable, scientific, educational, or testing for public safety purposes.

Section 1.501(a)-1(c) of the Income Tax Regulations defines private shareholder or individual as persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled by such private interests.

Section 1.501(c)(3)-1(d)(3)(i)(b) of the regulations provides that the term "educational" as used in section 501(c)(3), relates to the instruction of the public on subjects useful to the individual and beneficial to the community.

Section 1.501(c)(3)-1(d)(4) of the regulations defines the term "testing for public safety" as used in section 501(c)(3) to include the testing of consumer products, such as electrical products, to determine whether they are safe for use by the general public.

Section 1.501(c)(3)-1(d)(5)(i) of the regulations in defining the term "scientific" provides that since an organization may meet the requirements of section 501(c)(3) only if it serves a public rather than a private interest, a "scientific" organization must be organized and operated in the public interest.

Section 1.501(c)(3)-1(d)(5)(ii) of the regulations further provides that scientific research does not include activities of a type ordinarily carried on as an incident to commercial or industrial operations, as, for example, the ordinary testing or inspection of materials or products.

Rev. Rul. 55-231, 1955-1 C.B. 72, held that an organization whose primary purpose was to promote the circulation of books of one of its incorporators and whose activities consist of purchasing such works and making them available for public use, is not organized and operated exclusively for educational purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of

1954 or for any of the other purposes provided therein.

Rev. Rul. 67-292, 1967-2 C.B. 184, held that organizations engaged in the development and conservation of natural resources, such as forests, lands, or wildlife, for the benefit of the entire community may be exempt as charitable organizations.

Rev. Rul. 68-373, 1968-2 C.B. 206, held that a nonprofit organization primarily engaged in testing drugs for commercial pharmaceutical companies does not qualify for exemption under section 501(c)(3) of the Code.

Rev. Rul. 72-560, 1972-2 C.B. 248, held that an organization formed to educate the public regarding environmental deterioration due to solid waste pollution and operated with contributions and proceeds from sale of collected solid waste for recycling is exempt under section 501(c)(3) of the Code.

Rev. Rul. 76-204, 1976-1 C.B. 152, held that an organization formed for the purpose of preserving the natural environment by acquiring, by gift or purchase, ecologically significant undeveloped land, and either maintaining the land itself with limited public access or transferring the land to a government conservation agency by outright gift or being reimbursed by the agency for its cost was held to qualify for IRC 501(c)(3). However, an organization that restricts the use of its farm land to uses that do not change the environment but does not preserve land that is ecologically significant, has been denied exemption under IRC 501(c)(3). Rev. Rul. 78-384, 1978-2 C.B. 174.

An organization is not operated exclusively for charitable purposes, and thus will not qualify for exemption under section 501(c)(3), if it has a single non-charitable purpose that is substantial in nature. This is true regardless of the number or importance of the organization's charitable purposes. Better Business Bureau V. United States, 326 U.S. 278 (1945); Stevens Bros. Foundation, Inc. v. Commissioner, 324 F.2d 633 (8th Cir. 1963), aff'g. 39 T.C. 93 (1962), Cert. denied, 376 U.S. 969 (1964). Operating for the benefit of private parties who are not members of a charitable class constitutes such a substantial nonexempt purpose. Old Dominion Box Co., Inc. v. United States, 477 F.2d 340 (4th Cir. 1973), cert. denied, 413 U.S. 910 (1973).

It is generally recognized that efforts to preserve and protect the natural environment for the benefit of the public constitute a charitable purpose within the meaning of section 1.501(c)(3)-1(d)(2) of the regulations. The promotion of

[REDACTED]

conservation and protection of natural resources has been recognized by Congress as serving a broad public benefit. See, e.g., the National Environmental Policy Act of 1969, 42 U.S.C. section 4321 (1976). See also Rev. Rul. 76-204, 1976-1 C.B. 152, and the authorities cited therein.

The sole asset that you will use to accomplish your primary activity will be an artificial reef that you will obtain at cost from [REDACTED]. You have stated that your real purpose is to integrate the sinking and maintaining of the reef for public benefit along with operating a park in the area.

You are not conducting scientific research since you have stated that any actual research, testing and evaluation of the effects of the reef may be accomplished by anyone wishing to do so. Accordingly, you will not publish or otherwise make any results available to the general public.

Since the effects, or detriments, of the reef on the seabed and the shoreline will be available only to those who wish to explore them, and you provide no publicity about the existence or availability of the reef, or your activities, it appears that no one other than your founders and benefactors, [REDACTED], [REDACTED] will benefit from this technology as they will continue to use the technology, and presumably the results and effects of the reef in their commercial exploitation of the reef technology elsewhere. Like the organizations discussed in Rev. Rul. 68-373, your primary activity appears to be an activity ordinarily carried on as an incident to [REDACTED] and therefore serves the private interests of [REDACTED] rather than the public.

You can be distinguished from the organization discussed in Rev. Rul. 76-204, which was formed by scientists, educators, conservationists, and representatives of the community-at-large for the purpose of preserving the natural environment. You were formed and are sponsored by [REDACTED], [REDACTED], for the sole purpose of purchasing, sinking and maintaining an artificial reef. You have not established that this activity conserves natural resources or the natural environment as in Rev. Rul. 67-292.

Unlike the organization discussed in Rev. Rul. 72-560, you will not conduct research, provide lectures, produce publications, or otherwise educate the public on the benefits or detriments of the reef on the seabed or the shoreline. Nor, have you established that the operation of a park in conjunction with the activity

related to the artificial reef furthers any exempt purpose. Thus, your activities are not educational or charitable as defined in section 501(c)(3) of the Code. While your primary activities of purchasing (at cost), sinking, and maintaining the artificial reef, may result in some incidental public benefit, a more substantial private benefit redounds to your founders and benefactors.

When the interests of charity are sacrificed to the private interest of the founders or of those in control, exemption is precluded because the organization is being made to serve those private interests. Like the organization in Rev. Rul. 55-231, supra, we believe that you are operated to carry out the private purposes of [REDACTED]. Serving such private purposes constitutes a substantial non-charitable purpose as discussed in Better Business Bureau, supra., and therefore is a bar to exemption under section 501(c)(3).

Because we believe that you are operated for the benefit of private individuals, and you have not otherwise established that you qualify for exemption as an organization described in section 501(c)(3) of the Code, we can not recognize you as an organization exempt under that section.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgement or decree under this section shall not be issued in any proceeding unless the

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[REDACTED]

Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key district office. Thereafter, any questions about your federal income tax status should be addressed to that office. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

[REDACTED]  
[REDACTED]  
[REDACTED]

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

[REDACTED]  
[REDACTED]  
[REDACTED]

CC: [REDACTED]  
[REDACTED]

CC: [REDACTED]  
[REDACTED]

	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
Code	[REDACTED]	[REDACTED]					
Surname	[REDACTED]	[REDACTED]					
Date	[REDACTED]	[REDACTED]					